5 Blatch. 549. "Levying war," however, includes forcible opposition, as the result of a combination, to the execution of any public law of the United States. *U. S.* v. *Mitchell, 2* Dall. (U. S.) 348; *U. S.* v. *Vigol, 2* Dall. (U. S.) 346. The opposition must include: (1) A combination or conspiracy, by which different individuals are united for one purpose; (2) a common purpose to prevent the execution of a public law of the United States; (3) the actual use of force to prevent the execution of the law. *In re Charge to Grand Jury, 2* Curt. 630. The last would be unnecessary under the Washington statutes. Clearly, however, the treason clause was not intended to limit the power of the states to protect their institutions from dangerous and destructive attacks of any nature, merely because they have not ripened into treason. *Ex parte Bollman,* 8 U. S. 75. It would seem to be absurd to contend for the privileges and immunities of citizens of the United States to organize for the purpose of advocating crime and violence as a means of effecting or resisting political change. The only possible constitutional objection is that freedom of speech is abridged by the statute. The Washington Constitution protects freedom of speech but excepts the abuse of the right. Violations of similar statutes have been held to be such abuses as to be without the constitutional protection. *State* v. *Fox,* 71 Wash. 185, affirmed 236 U. S. 273; *State* v. *Moilen,* 140 Minn. 112. Certainly the federal guaranty does not extend to incitement to crime and violence. 19 MICH. L. REV. 487; FREUND, POLICE POWER, p. 510. It is absurd to suppose that any sovereignty will allow its safety and welfare to be undermined by literal interpretations of constitutional guaranties.

CONSTITUTIONAL LAW—STATE CEMENT PLANT.—The Governor of South Dakota addressed an inquiry to the judges of the Supreme Court as to the validity of an issue of bonds under an act of the legislature providing for the establishment of a state cement plant. The constitution of the state declares that the manufacture, distribution and sale of cement are works of public necessity and importance, in which the state may engage. *Held,* that taxation for such purpose is constitutional. *In re Opinion of the Judges,* (So. D., 1920), 180 N. W. 957.

That a tax should be in aid of a public purpose is inherent in the power of taxation, and the courts can declare a tax invalid, if it is not for a public purpose, without the aid of a constitutional provision. GRAY, TAXATION, 123-129. It is common, however, for state constitutions to include a prohibition against taxing for other than a public purpose. The United States Supreme Court is not justified in holding an act in violation of the state constitution in the face of clear decisions of the state supreme court to the contrary; see *Fallbrook Irrigation District* v. *Bradley,* 164 U. S. 112, 155. "The due process of law clause contains no specific limitations upon the right of taxation in the states, but it has come to be settled that the authority of the states to tax does not include the right to impose taxes for merely private purposes." *Green* v. *Frazier,* 253 U. S. 233, 40 Sup. Ct. 499, 501. See JUDSON ON TAXATION, § § 340, 343. On the authority of *Green* v. *Frazier,* the judges in the principal case were of the opinion that the Supreme Court would consider this valid

under the Fourteenth Amendment, if the case were before them. In *Green* v. *Frazier,* a statute creating a state bank, mill and elevator association, and a home building association, under the authority of the constitution of the state, was held valid, considering the peculiar condition of the state. The court says, "With this united action of people, legislature and constitution, we are not at liberty to interfere unless it is clear beyond reasonable controversy that rights secured by the Federal Constitution have been violated." This would seem to be the rule even where there is no sanction by the state constitution. If so, another strong case is *Jones* v. *Portland,* 245 U. S. 217, where a municipal wood and coal yard, authorized by statute alone, fuel to be furnished at cost to buyers, was upheld. To be sure, the court considered it a means of furnishing heat, and sufficiently analogous to furnishing light and water to be a public purpose. Massachusetts has held municipal fuel yards to be not a public purpose; *Opinion of the Justices,* 155 Mass. 598, *Opinion of the Justices,* 182 Mass, 605. See *Baker* v. *Grand Rapids,* 142 Mich. 687. To determine whether or not a particular tax is for a public purpose, the direct benefit to the public should be taken into account, also a consideration of what is feasible for the government to do, under existing conditions; i. e., whether the particular function could not be better done by private individuals, and also, whether conditions, under which it has been considered unfeasible have changed. See *Loan Association* v. *Topeka,* 20 Wall. 655, *Opinions of the Justices, supra,* and in 211 Mass. 624. A county cement plant, without a constitutional provision authorizing it, was held not to be a public purpose in *Los Angeles* v. *Lewis,* 175 Cal. 777. Allowing municipal waterworks to manufacture ice was held to be a public purpose in *Holton* v. *Camilla,* 134 Ga. 560. In *Union Ice and Coal Co.* v. *Ruston,* 135 La. 898, a municipal ice plant was held not a public purpose, but the court said, "no one would contest the right * * * if the town were of proper size for such a thing," under a state constitution requiring "strict" public purpose, for municipal undertakings. *North Dakota* v. *Nelson Co.,* 1 N. D. 88, under constitutional prohibition against taxing for aid of individuals except for necessary support of the poor, a statute authorizing distribution of seed corn to needy farmers on credit, in time of drouth, was held valid. *Jones* v. *Portland, Green* v. *Frazier, supra,* and the principal case seem to show a tendency towards paternalism, for these undertakings seem to be peculiarly fitted for private undertaking, although municipal fuel yards may be perfectly proper. If a state can be permitted to operate cement plants, there seems to be little it could not do.

CRIMINAL LAW—ASSAULT WITH INTENT TO ROB—CLAIM OF OWNERSHIP.—Claiming that Green owed him $150, defendant demanded payment at the point of a pistol, and upon Green's saying that he had nothing, defendant hit him on the head with the pistol. *Held,* if defendant in good faith believed that Green owed him the money, his offense was not assault with intent to rob. *Barton* v. *State,* (Tex., 1921), 227 S. W. 317.

It is well settled that the taking, by force or putting in fear, of specific property under bona fide claim of right thereto, is not robbery, *Glenn* v.